

1984 S.C. Op. Atty. Gen. 274 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-121, 1984 WL 186444

Office of the Attorney General

State of South Carolina

Opinion No. 84-121

October 10, 1984

***1** Pleadings and orders of protection issued to the provisions of Section 20-4-10 et seq. may be served on Sunday.

Chief Family Court Judge

You have asked whether a summons and petition for an order of protection and an order of protection issued pursuant to [Sections 20-4-10 et seq., Code of Laws of South Carolina](#), 1976, as amended, [the Protection from Domestic Abuse Act] may be served on Sunday. As you pointed out, [Section 15-9-1010, Code of Laws of South Carolina](#), 1976 provides that “(n)o civil process, except in attachment proceedings, shall be served on Sunday.” However, in the opinion of this office, it is arguable that the General Assembly intended that service of the items referenced above must be permitted on Sunday. Such authorization of service must be construed as an exception to the general legislation prohibiting Sunday service.

The Protection from Domestic Abuse Act in addition to establishing the crime of criminal domestic violence, established a civil procedure whereby an individual who has been physically harmed, assaulted, or threatened with physical harm may petition the courts for an order of protection. Such orders are not issued ex parte but only after service of a petition on the respondent. Generally, the family court has jurisdiction over all these proceedings, except that the petition may be filed with a magistrate during non-business hours or at other times when the family court is not in session. A magistrate is limited to issuing an order temporarily enjoining the individual causing the alleged abuse from abusing, threatening to abuse, or molesting the petitioner. The Legislature specifically recognized that in certain situations an emergency hearing must be held. Pursuant to Section 20-4-50(a), an emergency hearing may be held within twenty-four hours of service of a summons and petition upon the respondent.

Generally, the primary consideration in statutory construction is the intention of the legislature. [Citizens and Southern Systems, Inc. v. S.C. Tax Commission](#), 280 S.C. 138, 311 S.E.2d 717 (1984). Also, generally, legislative conflicts should be harmonized. [Neel v. Shealy](#), 261 S.C. 266, 199 S.E.2d 542 (1973). In such opinion, it was stated that in harmonizing such conflicts, “one necessarily resorts to legislative intent.” 199 S.E.2d at 547. Referencing the intent of the Protection from Domestic Abuse Act stated above and especially those provisions which recognized the necessity of emergency hearings in certain instances, it is apparent that the act should be construed as authorizing service on Sunday of pleadings and any order of protection which may be issued pursuant to its provisions. Such construction is necessary to effectuate the clearly-recognized purpose of the act to provide emergency relief where appropriate and to avoid the absurd result that would occur if such pleadings and orders could not be served on Sunday. Generally, statutes in apparent conflict must be read together and reconciled if possible so as to avoid an absurd result. [Powell v. Red Carpet Lounge](#), 280 S.C. 142, 311 S.E.2d 719 (1984). As stated, an emergency hearing may be held where appropriate but such hearing can only be held following service of the necessary pleadings upon the respondent. Obviously in certain instances, therefore, service on Sundays must be allowed to accomplish the recognized purpose of the legislation. Also, to accomplish the result intended, service of an order of protection on Sunday must be permitted.

***2** The State Court Administration office has been informed of the conclusion of this opinion and they are in agreement.

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